

Acton Board of Health

Minutes

May 22, 2006

Members Present: Mark Conoby, Acting Chairman, William McInnis, Chairman, , Joanne Bissetta, Member, Dr. Bill Taylor, Member, and Pam Harting-Barrat, Member and Phil Alvarez, Associate.

Staff Present: Doug Halley, Health Director and Sheryl Ball

Others Present: Debra Simes, Lon Nichols, Rich Harrington, John Blake, Ashley Barrat, Tai Summers-McGuinness, Michael McGuinness, Sue Howe, Claire Pelletier, John Murphy, Terra Friedrichs, Beth Thompson, Kerry Byrne and Andy Munro.

The meeting was called to order at 7:40 PM.

Variance – 3 Brookside Circle:

The Health Department is in receipt of an application for a variance from 310 CMR 15.405(1)(a) for a reduction in the required setback to a property line and 310 CMR 15.405(1)9b) for a reduction in the setback from a slab to the septic system for the property located at 3 Brookside Circle. The Health Department has reviewed these plans and finds that construction is limited by wetlands and the placement of the house. If these variances are not granted there would need to be a reduction in the size of the leaching area. The Health Department recommends approval of this request. On a motion made by Mr. McInnis, seconded by Ms. Bissetta, the Board unanimously voted to grant a variance from 310 CMR 15.405(1)(a) and 310 CMR 15.405(1)(b) to the property located at 3 Brookside Circle with the following conditions:

1. A deep test hole, to confirm the ESHGW elevation, is witnessed by an agent of the Board of Health, in the immediate area of the proposed system, prior to commencement of construction.

2. The northwestern property line shall be surveyed and staked in the field by a Professional Land Surveyor prior to commencement of construction, and the stakes shall be maintained during the construction process.
3. The septic tank shall be pumped a minimum of once every two years.
4. The system shall be built in accordance with the above conditions and a plan stamped by Eric Durling, PE dated 3/29/2006.

Variance – 23 Smart Road

The Health Department is in receipt of an application for a variance from Article 11-9.1 for a reduction in the LTAR for the property located at 23 Smart Road. The system as designed is in compliance with the proposed Article 11 revisions and the engineer has added an inspection port so that the system can be monitored throughout its life. On a motion made by Ms. Bissetta, seconded by Dr. Harting-Barrat, the Board unanimously voted to grant a variance to Article 11-9.1 to the property located at 23 Smart Road with the following conditions:

1. The septic tank shall be pumped a minimum of once every two years.
2. The system shall be built in accordance with a plan stamped by Steven Calichman, RS dated 5/5/2006.

Colonial Path – Sylvia Road - Variance

The Health Department has received a request from Glen Kaufman and Paul Gaprey for a variance from 310 CMR 15.214 (development in Zone 2) for proposed new construction at Colonial Path. Rich Harrington, of Stamski and McNary, is representing Mr. Gaprey and Mr. Kaufman. Mr. Harrington stated that the Stamski & McNary discovered that this area has been identified by the DEP as an approved Zone 2 as the Town of Maynard's public well is located at the back portion of this property. Mr. Harrington outlined the definition of Zone 2 stating that for every bedroom the lot has to have 10,000 square feet. The Planning Board had granted approval to subdivide this property into five lots and the Health Department had approved the septic plans however, the discovery of this area being located in Zone 2 voided the plans. Mr. Harrington stated that they consider this

area outside Zone 2 and they have requested clarification from the DEP. The DEP has stated that a re-delineation of the Zone 2 would need to be done at the owner's expense. Mr. Harrington stated that it is manifest injustice when actual on-site field results clearly indicate that the limits of Zone 2 do not extend into this site stating that the site has glacial till and bedrock which are excluded from Zone 2. It was asked if the Town of Maynard would ever need to redefine the Zones at any point but it was stated that only if the capacity were to change in the wells. Mr. Harrington stated that a re-delineation would take years and be a considerable expense. The Board stated that this request needs to be addressed by the DEP as they approved the Zones. Mr. Harrington stated that they would like Board of Health approval so that they can bring this issue to the DEP to discuss this with them. The Board strongly feels that this decision should be made by the DEP. Mr. Conoby asked Mr. Harrington if he could state with certainty that this area is not located in a Zone 2. Mr. Harrington stated that he is not qualified to answer that and a Hydro-geological study would need to be done to make changes to delineate the Zone 2 line.

Mr. McInnis left the meeting to attend Selectmen meeting at 8:14 PM.

Mr. Harrington stated that the property was purchased without the knowledge of it being in a Zone 2. The Board all agreed that this request should go before the DEP for approval. John Blake, Atty. representing Tai Summers and Michael McGuinness summarized his letter stating that Zone delineation is under the jurisdiction of the DEP. and Manifest Injustice is defined as depriving the applicant of all beneficial use of the property. Mr. Blake stated that without this variance the area could support a total of 12 bedrooms when the applicant has submitted this variance request to allow for 16 bedrooms. Mr. Blake also stated there is an appeal procedure in the court system. Glen Kaufman, co-developer, asked if the Board were to deny this variance could they still move forward to the DEP. It was stated that all denials can be appealed to the DEP. The co-developers requested a continuance of this variance request. Mr. Conoby stated that technical data would be required for a continuance and that new construction variances are only allowed if additional environmental protection can be met. On a

motion made by Dr. Harting-Barrat, seconded by Ms. Bissetta, the Board unanimously moved to take no action.

Variance – 26 Grasshopper

The Health Department has received an application from Glen Kaufman for a variance from Article 9-6.4 for a private well at 26 Grasshopper Lane in an area with Town Water. The Health Department recommends approval based on the cost to hookup to the Town Water. The properties on Grasshopper are set substantially far from the road and this property is located behind the existing homes and two wetlands would need to be crossed in order to bring a water line onto the property. The Board questioned what kind of testing is required for a well. It was stated that a bacterial test must be done once per year and chemical testing every three years. The Board stated that they would like to see VOC and Perchlorate testing requirement included in the regulations.

On a motion made by Dr. Taylor, seconded by Dr. Harting- Barrat, the Board unanimously voted to grant a variance from Article 9-6.4 to the property located at 26 Grasshopper Lane with the following conditions:

1. Installation of a well shall be in compliance with all applicable state and local regulations.
2. Initial water quality tests shall be performed by a DEP certified lab and shall also include analyses for Volatile Organic Compounds (EPA method 624) and Perchlorate. This testing shall be submitted to the Health Department prior to approval of the Occupancy Permit.
3. The primary purpose of this well is to provide potable water for domestic uses and the well shall only serve the facility located at 26 Grasshopper Lane.

Title 5 Waivers

Mr. McInnis arrived back from the Board of Selectmen meeting and gave the Board of Health a summary of meeting. Mr. McInnis stated that the Board of Selectmen gave him assurance of their commitment to the sewer project. The BOS also stated that they would like the BOH to accept the opinion that has already been provided by Town Counsel.

Additionally, the BOS would like to see waivers issued for five (5) years. Mr. McInnis

informed the Board of Selectmen that the reason the Board of Health discussed two year waivers instead of five was due to the length of time until the sewers are on line. The Board of Health did not want to be in the position of having to withdraw waivers so they discussed granting two year waivers and extending to five years based on the allowance of the code to not have to replace a failing title 5 for up to two years. The Board discussed whether there was the ability to escrow funds upon sale of a home so that people buying the home would have some assurance. Mr. Halley stated that condo associations put money aside for future replacements of their septic system, however he would not want to see the town become a banker. Sue Howe, 33 Tuttle Drive, stated that selling a home with a 5 year waiver will be difficult, however, a two year waiver would be impossible.

Mr. Halley suggested that the BOH place a condition on any waiver request that the waiver be extended to 5 year after an affirmative Town meeting vote to appropriate the monies. Claire Pelletier, 33 Tuttle Drive stated that they have been told that their septic system would fail due to a technical failure. Ms. Pelletier further stated that in order to sell her home a new septic would need to be installed. It was also stated that the neighborhood is in a position to vote in the sewer, however, if enough people put in a septic systems the Town would run the risk that the money may not be appropriated at town meeting. Mr. Halley stated that the Town is working on having legislation approved by the State to allow us to assess betterments instead of privilege fee. Mr. Halley encouraged the neighborhood to contact their legislator to support the assessment of betterment fees. Ms. Friedrichs asked about the difference in two (2) and five (5) year waivers. It was stated that if a system in the proposed sewer district were to have a catastrophic failure that is would be the hope to limp the septic system along awaiting the sewers, however, if that was not possible a new system would need to be installed. Mr. Munroe stated that he will need to replace his septic system at a cost of \$30,000 and will need an ugly mound which will take away from his property value. Mr. Conoby asked if the Town has a substantial financial commitment. Mr. Halley stated that we have town counsel opinion stating that we do. Mr. Halley stated that with the first sewer district the Board granted waivers upon providing failed title 5 inspections when the process was

beginning and then allowed people to declare that they had failed title 5 without the actual inspection and finally as the project came to the end the BOH granted a blanket waiver as long as the homeowner agreed to the terms in writing. Mr. Conoby asked if the Board is in a position to grant waivers he would want the seller to agree to the conditions of the waiver in writing. Ms. Bissetta asked about the timelines. Mr. Halley stated that the legislation would need to be passed prior to going before Town Meeting for appropriation of money and it is getting late in this legislation session. Mr. McInnis stated that the Board would need more time to discuss the conditions they would impose with a Title 5 waiver. The Board stated that they would want to know what the failure criteria are and would want to see inspection report. The Board also discussed that they would be more willing to grant waivers as a result of failure due to high groundwater. Mr. Conoby asked the Board to think about any conditions they would like imposed and asked each member to send conditions to the Health Department for discussion at the next meeting.

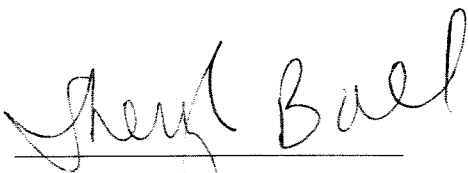
Revisions to Article 11

Mr. Halley stated that the rules and regulations of Article 11 will need to be amended as a result of the Title 5 revisions. A public hearing is scheduled for June 5, 2006 to discuss these proposed changes.


Adjournment

On a motion made by Mr. McInnis, seconded by Dr. Harting-Barrat, the Board unanimously voted to adjourn at 10:30PM.

Respectfully Submitted,



Sheryl Ball, Health Secretary
Acton Board of Health



Mark Conoby, Acting Chairman
Acton Board of Health